several distinct patents the right to combine. *E. Bement & Sons* v. *National Harrow Co.*, 186 U. S. 70, which is sometimes cited in support of the above proposition, involved a contract with only one manufacturer and the court expressly refused to state what might have been the holding if license contracts had been made with more than one.

By the above cases, it seems to have been established in the federal courts that the owner of a patent could require that only materials furnished by the licensor could be used with the patented article, thus allowing the licensor to control an unpatented article by virtue of his ownership of a patent on a different article; that the owner of a patent could sell the patented article and control the re-selling price; and that a combination of manufacturers which, under ordinary circumstances, would be contrary to the Sherman Law, is freed from the control of the statute by virtue of the fact that the article involved is covered by a patent. In the principal case, the court was asked to go further and hold that a combination which controlled an unpatented article is freed from the control of the statute by virtue of the fact that the agreements upon which the combination are based are in the form of licenses to use a patented tool used in the manufacture of the article controlled. The court refused to so hold, and, as shown by the language above quoted from the opinion, indicated that its holding would be the same if the article controlled by the combination were itself patented.

It is interesting to note in this connection that in case of the passage of the proposed patent law submitted to Congress last August, the three doctrines given above as established in the federal courts will be destroyed. The proposed statute provides that labels or agreements controlling the re-selling price or use of the patented article shall be of no effect, and that any patent used as a part of any combination in restraint of interstate commerce may be condemned in the manner provided for the seizure and condemnation of goods illegally imported. R. L. M.

ADMISSIBILITY OF UNANSWERED PLEADINGS AGAINST THE PERSON CALLED UPON TO ANSWER THE SAME.—A peculiar problem as to the effect of admissions made in the trial of another cause was recently presented before the Supreme Court of Missouri in the case of *Miller* v. *Journal Company*, 152 S. W. 40. The plaintiff sued the defendant newspaper company for libel. Upon cross-examination of the plaintiff, and with the intent to impeach him, the defendant asked as to the former's marital relations. The plaintiff then introduced several witnesses who testified that his marital conduct was good. Thereupon the defendant offered in evidence the petitions in two different divorce suits brought by the plaintiff's first wife against him. In one of the suits the plaintiff had been served with summons, but had made no appearance nor contest, and judgment was not entered. The court favored the admissibility of the petition and in discussing the question gave utterance to the following observation: "We find no case where this question has been raised on a record where the default was not entered. But reason is the soul of the law, and the law should be co-extensive with the reason for it. And

it is the failure to answer, and not the judgment, which constitutes the admission; the admission was complete in the divorce case when the defendant therein, according to his own admission, made no attempt to deny the charge."

An observation of the various kinds and classes of admissions made by one or other of the parties in some prior legal proceeding, which have been admitted by the courts as evidence on a subsequent trial, even at the instance of a stranger to the original litigation, is interesting. It emphasizes the approval which courts entertain for consistency on the part of a litigant, and their willingness to have evidence of any inconsistency made known to the tribunal. Mr. CHAMBERLAYNE has, in his late work on the MODERN LAW OF EVIDENCE, accurately distinguished the admission here treated from the judicial admission occurring during the course of a trial. At § 1233, the author says, "For forensic purposes admissions may be classed as judicial or extra-judicial. The judicial admission is one made on the record or in connection with the judicial proceedings in which it is offered in evidence. An extra-judicial admission is one *in pais*, not made in court for the purpose of the case on trial in which it is offered. An admission made in the course of judicial proceedings in a case other than that in which it is offered, though of record or in connection with judicial proceedings in another case, is properly classed as extra-judicial."

It is now settled by reason and authority, subject to varying requirements in different jurisdictions, that admissions contained in pleadings in a prior cause may be availed of in a subsequent cause, as extra-judicial admissions of the party. One court, in admitting a party's petition filed in a former suit, thus pertinently remarked, "If his parol declarations were admissible, we see no reason why his declarations in a petition, filed in court, should be rejected." *Wells* v. *Compton*, 3 Rob. (La.) 171; *Lee* v. *C. St. P. M. & O. Ry.*, 101 Wis. 352; *Ayres* v. *Hartford Fire Ins. Co.*, 17 Ia. 176; *Printup* v. *Patton*, 91 Ga. 422; *Nicholson* v. *Snyder*, 97 Md. 415; *Cook* v. *Barr*, 44 N. Y. 156. CHAMBERLAYNE, MODERN LAW OF EVIDENCE, §§ 1249-1250; WIGMORE, EVIDENCE, § 1066. But some courts are strict in their demand that the statements or admissions in the pleadings be "brought home" to the litigant party before resort may be had thereto in a subsequent proceeding. The court, in *Dennie* v. *Williams*, 135 Mass. 28, while excluding an answer filed in a former suit and signed by the attorney, in the absence of any showing as to how far the attorney was particularly instructed, quoted Justice Gray in *Elliott* v. *Hayden*, 104 Mass. 180, to the following effect, "As no action of the court was obtained upon the bill in equity, the statements therein, if they had not been made upon the oath of the plaintiffs, might have been considered as mere suggestions of the counsel and not competent evidence of admissions by the parties. But being upon the oath of the parties in whose behalf the bill was filed, they are competent evidence as solemn admissions by them in person of the truth of the facts stated—upon the same ground upon which sworn answers and pleas in chancery, or allegations concerning the substance of the action in a declaration at common law have been held

admissible in evidence in another suit." See also *Solari v. Snow,* 101 Cal. 387.

What may be designated as a second class embraces those cases where pleas of guilty or *nolo contendere* in criminal prosecutions have been admitted in evidence in subsequent civil actions. In speaking of these admissions, however, Mr. CHAMBERLAYNE in the treatise above cited, at § 1251 has said that they "more closely resemble admissions by conduct, and are, in effect, merely circumstantial evidence, not relevant upon a subsequent trial. Considerations of an entirely different nature than actual belief in the statements of the charge may have determined the party to plead as he has done." In the case of *Birchard* v. *Booth,* 4 Wis. 85, the defendant in a criminal prosecution had orally acknowledged his guilt and in a civil action for the same offense the court permitted the prior admission to be offered in evidence. Also in *Young* v. *Copple,* 52 Ill. App. 547, the defendant had pleaded guilty in a former criminal prosecution, and in dealing with the admissibility of this fact in a later civil action the following comment was made, "the record should be admitted in evidence as a solemn admission to be weighed by the jury in connection with all the other evidence in the case." The case of *State* v. *Henson,* 66 N. J. L. 601, is also applicable.

A further extension of the doctrine of admissibility of such admissions is discerned in the principal case and others analogous thereto. In the principal case there was no positive statement in any former pleading; in fact no plea or answer was ventured by the party against whom the admission was asserted. The admission growing out of the former suit approaches that class of cases where silence and refusal to act in the face of a manifest duty to do so amounts to an admission. In *Ellis* v. *Jameson,* 17 Me. 235, cited in the principal case, the pivotal question was whether or not one Stevens was a member of the partnership firm claimed by the plaintiff to have indorsed the note. To sustain the affirmative of this contention the plaintiff proffered records of former judgments taken by default against the partnership and wherein said Stevens had been designated as a partner. The court in sanctioning the admissibility of these records said, "the default is a statute admission of the fact. In these suits, the alleged partners, including Stevens, being charged as partners by legal process, admit the fact, and suffer judgments to go against them by default. It is not easy to conceive by what more positive act they could hold themselves out to the world as partners or could more explicitly justify others in dealing with them as such." The New York case of *Eisenlord* v. *Clum,* 126 N. Y. 552, 12 L. R. A. 836, is likewise relied upon and quoted in the principal case, and while it contains language evidently sanctioning the breadth of the doctrine therein enunciated, yet it must be conceded that the point was not directly involved. The plaintiff in an action of ejectment sought to establish the fact that his mother, one Margaret Lipe, had married prior to said plaintiff's birth one Eisenlord, deceased; and for this purpose the plaintiff sought recourse to the evidence of said Margaret Lipe. The trial court excluded her evidence, however, believing that the witness was interested, because if the fact of marriage was established she would then be entitled to dower in the real estate. The Court of Appeals indulged a different opinion. Justice PECKHAM expressed

their view in the following manner, "The General Term also thought the judgment would be evidence as a declaration or admission by the plaintiff of the facts, or some of them, which the witness would have to prove in her action against him for dower. Any declaration or admission made by the plaintiff as to any fact material for the witness to prove in her action, is undoubtedly admissible as an admission. If found in a pleading, and it be shown that it was placed there with the knowledge and sanction of the plaintiff herein, such pleading would be admissible for the purpose of proving such admission. In order, however, to prove such admission, it is not necessary or proper to put in evidence the judgment in the action, for it is not the judgment which furnishes the proof, but the admission contained in the pleadings, and the judgment is not in that case the least evidence in favor of the witness in any action she might bring. The admission would exist without the judgment and regardless of it. * * * The cases cited from 1 GREENLEAF, EVIDENCE, 527a, are those where it was claimed the party had made an admission in a declaration or other pleading, or had suffered default, and it was held such express admission, or such constructive admission by suffering a default, was competent evidence against him. We do not doubt the correctness of this rule. It is not the judgment which is to form the evidence. It is the admission contained in the pleading or by the suffering of the default." From this it is clear that the court had in mind an actual admission or statement contained in a former pleading. It was not the case of an admission derived from a default, much less a case where the judgment by default was never actually entered. The doctrine of the principal case, while helpful to some degree in arriving at the truth, nevertheless disregards the necessities which may have prompted a party to suffer a default, or which may have caused him to refuse to defend the suit. These considerations would seem particularly appropriate when applied to a suit for divorce, but the Missouri court, in answer to this objection, states that such elements "might be considered as to the weight to be given to the petition as evidence, but do not go to its competency." S. E. D.

SHOULD A NAME BE PROTECTED AS "PROPERTY"?—The United States District Court for the Western District of Missouri has recently decided that there is no property right in a name as such, and that if a case presents no question of libel *per se*, of special damages resulting from the act of the defendant, or of trade-mark, trade-name, or unfair competition, a court of equity will not interfere to prevent the use of complainant's name by another. *Vassar College* v. *Loose-Wiles Biscuit Company*, 197 Fed. 982. In this case the complainant college sought to restrain the use of its name Vassar, its seal and other insignia, upon the boxes of chocolates and candies manufactured by the defendant. The complainant claimed a right of property in its name, etc., which entitled it to exclude all others from using them. The court denied the existence of the right claimed, and inasmuch as complainant